

**ORIGINAL**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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KYLE FREISTAT,

PLAINTIFFS, IN CLERK'S OFFICE  
DISTRICT COURT E.D.N.Y.

★ MAR 19 2020 ★

NOTICE: OF SUMMONS COMPLAINT  
UNIFORM RULE 202.5=bb

\*against=

DANIEL GASPERETTI et al,

BROOKLYN OFFICE

17-CV-6304 (RRM)(LB)

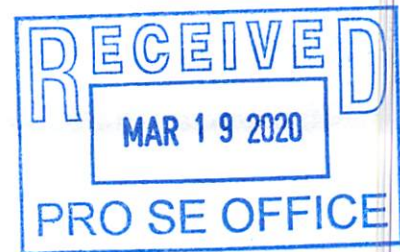
Defendants.

=====\*

ATTENTION, HONORABLE LOIS BLOOM, UNITED STATES MAGISTRATE JUDGE, THANK YOU  
FOR YOUR TIME AND AS ALWAYS YOUR HONESTY, IM BRINGING TO YOUR ATTENTION  
A FOREGOING SUMMONS COMPLAINT THAT I JUST RECIEVED ON, 3/12/20, from  
defendant, DANIEL GASPERETTI, BY HIS ATTORNEYS, DECULATOR, COHEN & DIPRISCO, LLP

I DONT KNOW IF ITS THE RIGHT THING FOR ME TO BRING THISE MATTER TO YOUR  
ATENITION BUT, I HAVE FOR IN MY HEART I FEEL ITS THE RIGHT THING TO DO, SORRY  
FOR PUTTING YOU OUT OF YOUR WAY , PLEASE FORGIVE, ME, AND I THANK YOU FOR  
YOUR TIME, GOD BLESS YOU.....

KYLE FREISTAT a/k/a, joel burnett  
c/o, great meadow correctional facility  
11739, state route 22, p.o. box, 51  
comstock, new york, 12821-0051



YOURS, etc.

*Joel Burnett*

=====

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS**

-----X  
DANIEL GASPERETTI,

Plaintiff/Petitioner,

- against -

KYLE D. FREISTAT a/k/a JOE BURNETT  
and DANIELLE MCPHILL,

Index No. 70 3013/2020

Defendant/Respondent.  
-----X

**NOTICE OF ELECTRONIC FILING  
(Mandatory Case)  
(Uniform Rule § 202.5-bb)**

**You have received this Notice because:**

1) The Plaintiff/Petitioner, whose name is listed above, has filed this case using the New York State Courts E-filing system ("NYSCEF"), and

2) You are a Defendant/Respondent (a party) in this case.

◦ **If you are represented by an attorney:**

Give this Notice to your attorney. (Attorneys: see "Information for Attorneys" pg. 2).

◦ **If you are not represented by an attorney:**

**You will be served with all documents in paper and you must serve and file your documents in paper, unless you choose to participate in e-filing.**

**If you choose to participate in e-filing, you must have access to a computer and a scanner or other device to convert documents into electronic format, a connection to the internet, and an e-mail address to receive service of documents.**

**The benefits of participating in e-filing include:**

- serving and filing your documents electronically
- free access to view and print your e-filed documents
- limiting your number of trips to the courthouse
- paying any court fees on-line (credit card needed)

**To register for e-filing or for more information about how e-filing works:**

- visit: [www.nycourts.gov/efile-unrepresented](http://www.nycourts.gov/efile-unrepresented) or
- contact the Clerk's Office or Help Center at the court where the case was filed. Court contact information can be found at [www.nycourts.gov](http://www.nycourts.gov)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
DANIEL GASPERETTI,

Plaintiff,

- against -

KYLE D. FREISTAT a/k/a JOEL BURNETT and  
DANIELLE MCPHILL,

Defendants.  
-----X

TO THE ABOVE NAMED DEFENDANT(S):

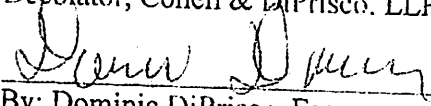
***YOU ARE HEREBY SUMMONED*** to appear in this action by serving a notice of appearance on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is place of occurrence.

Dated: Garden City, New York  
February 20, 2020

Yours, etc.

Decolator, Cohen & DiPrisco, LLP

  
By: Dominic DiPrisco, Esq.

Attorneys for Plaintiff  
1399 Franklin Avenue, Suite 300  
Garden City, New York 11530  
(516) 742-6575

DEFENDANT'S ADDRESS:

KYLE F. FREISTAT  
a/k/a JOEL BURNETT  
109-21 157<sup>th</sup> Street  
Jamaica, New York 11433

DANIELLE MCPHILL  
645 Glen Circle Drive  
Tobyhanna, Pennsylvania 18466

KYLE F. FREISTAT a/k/a JOEL BURNETT  
c/o Great Meadow Correctional Facility  
11739 State Route 22 P.O. Box 51  
Comstock, New York 12821-0051

DANIELLE MCPHILL  
c/o Secretary of State  
Albany, New York  
(Pursuant to Section 253 of the VTL)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
DANIEL GASPERETTI,

Plaintiff,

-against-

KYLE D. FREISTAT a/k/a JOEL BURNETT and  
DANIELLE MCPHILL,

Defendants.  
-----X

Index No. 70301312012

**VERIFIED  
COMPLAINT**

Plaintiff, by his attorneys, DECOLATOR, COHEN & DIPRISCO, LLP, as and for his  
Verified Complaint, respectfully alleges, upon information and belief, as follows:

**AS AND FOR A FIRST CAUSE OF ACTION  
ON BEHALF OF THE PLAINTIFF**

1. That at all times hereinafter mentioned, the plaintiff was and still is a resident of the County of Queens, State of New York.
2. At all times hereinbefore mentioned, plaintiff was and still is a police officer employed by the New York City Police Department and was acting within the scope and furtherance of his duties.
3. Upon information and belief, at all times hereinafter mentioned, the defendant, KYLE D. FREISTAT a/k/a JOEL BURNETT, was and still is a resident of the County of Queens, City and State of New York.
4. Upon information and belief, at all times hereinafter mentioned, the defendant, DANIELLE MCPHILL, was and still is a resident of the State of Pennsylvania.

5. Upon information and belief, at all times hereinafter mentioned, the defendant, DANIELLE MCPHILL, was the owner of a certain 2005 Nissan motor vehicle, bearing Pennsylvania registration number KKD7712.

6. Upon information and belief, at all times hereinafter mentioned, the defendant, KYLE D. FREISTAT a/k/a JOEL BURNETT, was the operator of a certain 2005 Nissan motor vehicle, bearing Pennsylvania registration number KKD7712.

7. That at all times hereinafter mentioned, the defendant, KYLE D. FREISTAT a/k/a JOEL BURNETT, operated and controlled the said motor vehicle with the express and/or implied permission and consent of the owner/defendant, DANIELLE MCPHILL, thereof.

8. That at all times hereinafter mentioned, the plaintiff was lawfully and properly a pedestrian.

9. On or about July 26, 2017, at or about 112-18 178<sup>th</sup> Street, with its intersection at 112<sup>th</sup> Avenue, in the County of Queens, City and State of New York, was and still is a public highway.

10. At the time and place aforesaid, the motor vehicle operated by defendant, KYLE D. FREISTAT a/k/a JOEL BURNETT, came into contact with the person of the plaintiff.

11. On or about July 26, 2019, at approximately 4:00 p.m., while the plaintiff, was lawfully and properly a pedestrian at the location as afore-described, defendant, KYLE D. FREISTAT a/k/a JOEL BURNETT, at the time operated his vehicle in such a negligent and careless fashion as to cause a collision to occur, causing severe personal injuries to the plaintiff.

12. The said collision was caused solely and wholly by reason of the negligence and carelessness of the defendant with no fault or culpable conduct on the part of the plaintiff contributing thereto.

13. The said defendant so negligently and carelessly owned, managed, operated and controlled his said motor vehicle, that without any negligence or fault on the part of the plaintiff, and solely by reason of the negligence and carelessness of said defendant, defendant's motor vehicle suddenly came into violent contact with the plaintiff's person and, as a result, the plaintiff sustained the injuries hereinafter described.

14. Plaintiff has sustained serious injuries as same are defined in Subdivision (d) of Section 5102 of the Insurance Law of the State of New York and economic loss greater than basic loss as defined in said section of the law.

15. This action falls within one or more of the exceptions set forth in CPLR Section 1602.

16. As a result of defendant negligence as aforesaid, the plaintiff was severely injured both internally and externally, that plaintiff became sick, sore, lame and disabled, and has suffered great pain, shock and mental anguish and will continue to suffer for a long time to come and, upon information and belief, has been permanently injured; that by reason of the foregoing, the plaintiff, has been obligated to and did necessarily employ medical aid and medicines in an attempt to cure said injuries; that plaintiff was incapacitated from work by reason, and by reason of said disabilities plaintiff lost wages, salary and earnings all to plaintiff's damage in an amount in excess of the maximum monetary jurisdiction of all lower courts of the State of New York.

**AS AND FOR A SECOND CAUSE OF ACTION  
FOR AND ON BEHALF OF THE PLAINTIFF**

17. The plaintiff repeats, reiterates and realleges all of the facts set forth in paragraphs "1" through "13", inclusive with the same force and effect as though more fully set forth herein.

18. At all times hereinbefore mentioned, the plaintiff was and still is a police officer employed by the New York City Police Department and was acting within the scope and furtherance of his duties.

19. At all times hereinbefore mentioned, the defendant neglected, omitted and/or was wilfully and/or culpably negligent in failing to comply with Sections 1146(a), 1192, 1180(a), 1212, 1172-a, 600(2a), 1110(a), 375-40 (b)(v) and 375(1) of the Vehicle and Traffic Law.

20. Defendant violated the said statutes in that the said defendant did: own, operate, maintain, supervise and control said motor vehicle in a dangerous, negligent, reckless and careless fashion; failed to exercise proper, reasonable and prudent control over said motor vehicle; operated the said motor vehicle at a dangerous and reckless rate of speed; failed to properly control the speed of the said motor vehicle; failed to properly check the speed of the said motor vehicle; failed and omitted to operate the said motor vehicle at a speed that was reasonable and prudent under the conditions then and there existent; failed and omitted to give due regard to the actual and potential hazards then and there existent; in failing to obey police instructions in driving the vehicle while plaintiff was conducting police activities; failed to properly bring the said motor vehicle to a halt; failed to properly control the said motor vehicle; failed to obey a traffic control device; failed to properly apply the brakes to the said motor



vehicle; failed to properly and prudently observe the road, roadway and traffic conditions then and there existent; failed to properly and prudently maintain the said motor vehicle; failed to avoid the happening of the accident complained of; operated the said motor vehicle in a dangerous, illegal, and unsafe fashion; failed to observe the traffic conditions and traffic control devices; signs and signals; failed to observe, obey and give due regard for the rules of the road; disregarded traffic signals, signs and devices.

21. Solely by reason of the foregoing, the plaintiff asserts a cause of action against the defendant pursuant to Section 205-e of the General Municipal Law.

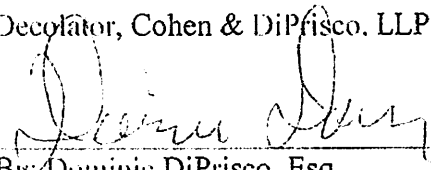
22. Solely by reason of the negligence and carelessness of the defendant, and with no fault or culpable conduct on the part of the plaintiff contributing thereto, plaintiff, has sustained damages in an amount in excess of the maximum monetary jurisdiction of all lower courts of the State of New York.

WHEREFORE, plaintiff demands judgment against the defendant in the First and Second Causes of Action in an amount in excess of the maximum monetary jurisdiction of all lower courts of the State of New York, together with punitive damages, and the costs and disbursements of this action.

Dated: Garden City, New York  
February 20, 2020

Yours, etc.

Decolator, Cohen & DiPrisco, LLP

  
By: Dominic DiPrisco, Esq.  
Attorneys for Plaintiff  
1399 Franklin Avenue, Suite 300  
Garden City, New York 11530  
(516) 742-6575



Check Applicable Box

- ☐ Verification By Attorney  
☐ Attorney's Affirmation

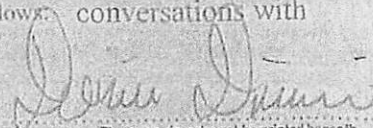
I, the undersigned, an attorney admitted to practice in the courts of New York State, has been compared by me with the original and found to be a true and complete copy.  
state that I am the attorney(s) of record for Plaintiff in the within action; I have read the foregoing Summons and Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by plaintiff is because the plaintiff resides

in a county other than the one in which your deponent maintains his office.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: conversations with plaintiff and office records.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: Garden City, New York; February 20, 2020 ss.:  
STATE OF NEW YORK, COUNTY OF

  
The name signed must be printed beneath  
Dominic DiPrisco

I, the undersigned, being duly sworn, depose and say: I am

- ☐ Individual Verification  
☐ Corporate Verification

in the action; I have read the foregoing and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.  
the of corporation and a party in the within action; I have read the foregoing and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF ss.: (If more than one box is check — indicate after names type of service used.)  
I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age and reside at

- On  
☐ Service By Mail  
☐ Personal Service on Individual  
☐ Service by Electronic Means  
☐ Overnight Delivery Service

I served the within  
by mailing a copy to each of the following persons at the last known address set forth after each name below.  
by delivering a true copy of each personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:  
by transmitting a copy to the following persons by ☐ FAX at the telephone number set forth after each name below ☐ E-MAIL at the E-Mail address set forth after each name below, which was designated by the attorney for such purpose, and by mailing a copy to the address set forth after each name.  
by dispatching a copy by overnight delivery to each of the following persons at the last known address set forth after each name below.

Sworn to before me on

The name signed must be printed beneath



DANIEL GASPERETTI,

*Plaintiff,*

*-against-*

KYLE D. FREISTAT a/k/a JOEL BURNETT and DANIELLE MCPHILL,

*Defendants.*

SUMMONS AND COMPLAINT

DECOLATOR, COHEN, & DIPRISCO, LLP  
ATTORNEYS AT LAW

*Attorneys for*

*Plaintiff*

*Office and Post Office Address, Telephone*  
1399 Franklin Avenue • Suite 300  
GARDEN CITY, NEW YORK 11530

TEL: (516) 742-6575

FAX: (516) 742-6706

To

Signature (Rule 130-1.1-a)



Print name beneath

Dominic DiPrisco

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....  
Attorney(s) for

Please take notice

☐ NOTICE OF ENTRY

that the within is a (*certified*) true copy of a  
duly entered in the office of the clerk of the within named court on

☐ NOTICE OF SETTLEMENT

that an order  
settlement to the HON.  
of the within named court, at  
on

of which the within is a true copy will be presented for  
one of the judges

at

M

Dated,

Yours, etc.

DECOLATOR, COHEN, & DIPRISCO, LLP  
ATTORNEYS AT LAW

To

*Attorneys for*

Attorney(s) for

*Office and Post Office Address*  
1399 Franklin Avenue • Suite 300  
GARDEN CITY, NEW YORK 11530



GREAT MEADOW CORRECTIONAL FACILITY

BOX 51

COMSTOCK, NEW YORK 12821-0051

NAME: Joe L. Burnett DIN: 19A1353



**LEGAL MAIL**

Great Meadow

NEOPOST

FIRST CLASS MAIL

03/17/2020

US POSTAGE \$000.65

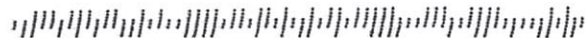


Correctional Facility



ZIP 12821  
041M11283103

HONORABLE Lois Bloom  
United States MAGistrate Judge  
Clerk OF U.S. District Court  
EASTERN District OF New York  
225. Cadman PLAZA EAST  
BROOKLYN, NY - 11201



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